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08/714,987 09/17/96 SHARKEY

H 17616-705

EXAMINER

33M1/0121

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ART UNIT

PAPER NUMBER

3311

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DATE MAILED: 01/21/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on October 2, 1997 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____   |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-44 are pending in the application.

Of the above, claims 30-44 are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1-29 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit: 3311

Claims 30-44 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 5.

Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 exactly what constitute "an at least partially fluid medium" is unclear. In claim 12, exactly what constitute "an optical coated fiber" is unclear. In claim 29 the exact meaning of the term "at least partially is adjacent to a fluid medium" is unclear.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-7, 9, 10, 12-20, 23-27 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Makower or Edwards et al.


The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3311

Claims 2, 8, 11, 21,<sup>22,</sup> and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makower or Edwards et al. Both Makower and Edwards et al teach a device as claimed except for the use of platinum, ~~lead-type sensor~~<sup>band sensors</sup>, thermistor type sensors, resistive heater or the use of potting compound. It would have been obvious to the artisan of ordinary skill to employ the sensors, heaters, electrode material and sensor location with potting compound fixation claimed, since these are not critical, provide no unexpected result and are <sup>n</sup>otorious throughout the art for performing these function, thus producing a device such as claimed.

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January 13, 1998  
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